Best Practices

Common Procedures in Successful Shareholder Dispute Matters—An Attorney's Perspective and a Valuation Practitioner's Perspective

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This discussion presents commonly employed procedures used in successful shareholder litigation matters. This discussion provides two points of view based on the authors' respective experience. In order to provide illustrative case examples, this discussion summarizes and compares a few recent judicial decisions involving shareholder disputes. For each judicial decision, and in our opinion, commonly practiced procedures may have led to a better judicial result—at least for one of the litigant parties. Admittedly, we do not purport to know all of the circumstances surrounding each judicial decision. However, we use these illustrative case examples as support for our recommended procedures.

Introduction

Within the construct of shareholder dispute litigation, there are many factors at play. If the dispute is related to a merger—for example, in a shareholder dissent matter—then legal counsel will often need a valuation analyst to provide a fair value opinion. Also, if the court is considering a buyout remedy in the case of a (1) shareholder oppression matter or (2) breach of duty action, then legal counsel will often engage a valuation analyst.

Regardless of whether that valuation analyst is engaged by the (1) plaintiff, (2) defendant, or (3) court (as an independent third-party appraiser), certain commonly employed procedures may be helpful.

The following discussion provides a summary of the commonly employed procedures in successful litigation matters, from the perspective of an attorney and a valuation analyst. More specifically, this discussion is intended to provide suggestions of how the legal counsel and the valuation analyst can more efficiently work together at different stages of a litigation dispute.

Collectively, these suggestions were developed through general observation over the course of several years.

We find that the following commonly employed procedures are often successful:

1. Effective early communication
2. Allowance for adequate time
3. Efficient document management
4. Open lines of communication including follow-up
5. Defining relevant expectations

Effective Early Communication

Effective early communication between the legal counsel and the valuation analyst is perhaps the most important procedure. In successful litigation matters, communication of case-specific concepts early in the process is particularly important.

Effective early communication from legal counsel may include the following case-specific objectives:

1. General valuation guidelines:
    a. Implications of the potential dates of value
    b. Application of the specific standard of value
2. Document discovery phase assistance
3. Additional forensic analysis needs
4. Pretrial decision-making

The general valuation guidelines are typically provided by legal counsel to the valuation analyst at the point of, or prior to, the engagement. The general valuation guidelines form the foundation for the valuation expert's opinion.

These general valuation guidelines need to be decided upon as early as practically possible. Such general valuation guidelines include the following topics:

1. Scope of the assignment
2. Relevant state statute
3. Relevant case law
4. Appropriate standard of value
5. Appropriate premise of value
6. Specific ownership interest to be valued
7. Relevant valuation date or dates
8. Other factors to consider

From a valuation analyst's perspective, effective communication between the valuation analyst and legal counsel is beneficial in both the document discovery phase and in the pretrial decision-making phase.

For numerous reasons, prior to the end of the document discovery period, the valuation analyst may need to identify certain documentation or additional information needed to complete the analysis. Therefore, open communication and early communication between the attorney and the valuation analyst is important.

Also, with regard to prefiling or pretrial decision making, a timely and credible value estimate may assist both the attorney and the clients to decide whether to settle or to proceed with the subject lawsuit. In matters that are resolved by negotiation short of litigation, a close working relationship between the legal counsel and the valuation analyst can add immensely to the ability of the parties to evaluate relative positions and make good decisions.

From a valuation analyst's perspective, early involvement in the subject dispute is important in order to provide a timely estimate.

Allowance for Adequate Time

For numerous reasons, the attorney should provide adequate time for a valuation analyst to perform the analysis and due diligence. In general, rushing the process often leads to, at a minimum, a limitation of the scope of the project. In other situations, not providing adequate time may be a contributory factor in the production of an inferior work product and a less than credible analysis.

From a valuation analyst's perspective, time is sometimes a luxury. For example, in certain engagements, the legal counsel may engage the analyst after other valuation analysts have already performed their analyses. In those certain circumstances, the attorney will often engage the valuation analyst to provide a rebuttal work product.

In such engagements, time is often limited. As a general rule, where time is limited, the scope of the valuation analyst's work product may also be limited.

Efficient Document Management

Document management is another important procedure. From a valuation analyst perspective, when the attorney can advise on relevant case documents, there are (1) time savings and (2) better utilization of financial resources.

Often in litigation engagements, there is an abundance of documentation provided. In certain situations, it is not uncommon to encounter a room filled with documentation. The valuation analyst can either (1) review all case documentation or (2) receive advice from legal counsel on where to find required documentation or other information requested by the analyst.

For example, such required documentation may include the following:

1. Audited financial statements
2. Articles of incorporation
3. Company board of director minutes
4. Company financial projections

Obviously, assistance from the legal counsel is important in a forensic analysis engagement that has a large quantity of documentation.

Open Lines of Communication Including Follow-Up

This procedure is recommended throughout the course of the engagement. In contrast, the effective early communication procedure is practiced in the initial phase of the forensic analysis engagement.

It is important for the attorney and the valuation analyst to keep lines of communication open. This line of communication may start with the scheduling order. The scheduling order assists the valuation analyst in planning for the work product delivery.

From a valuation analyst's perspective, beyond the scheduling order, regular follow-up by legal counsel is preferred. Regular follow-up may circumvent timing issues and other case-specific issues.

While open and frequent communication is important, at the time of engagement, the legal counsel may discuss with the valuation analyst the relevant law regarding discovery. That law may affect the conclusion, the report, and the subsequent testimony of the valuation analyst.

More specifically, the attorney should communicate the relevant rules regarding discovery of facts, data, or other information relied on by the valuation analyst. Those rules regarding discovery may vary among jurisdictions.

Information that is commonly considered "discoverable" includes the following:

1. Engagement compensation paid to the valuation analyst
2. Material provided by the legal counsel
3. Assumptions provided by the legal counsel that were used in forming the expert opinion

Beyond that, drafts and other communication may be discoverable depending on the jurisdiction.

Defining Relevant Expectations

Typically, the most common assumption for a valuation analyst to make is to assume that the engagement will be litigated. Therefore, it is important for the attorney and the valuation analyst to work together and to align engagement expectations.

In certain litigation engagements, a valuation analyst may be asked by legal counsel to provide more than one value estimate. In those engagements, the valuation analyst may arrive at a "high" value indication and a "low" value indication. It is recommended that the valuation analyst advise legal counsel as to (1) why the value indications are different and (2) the perceived strengths and weaknesses of the alternative value indications.

On the other hand, it is recommended that legal counsel communicate to the valuation analyst how the value indications will be used (e.g., for settlement discussions, in an oral representation, or in a written context).

Within the scope of defining relevant expectations, legal counsel may anticipate a relatively quick resolution to a litigation matter. Or, legal counsel may anticipate that the work of the valuation analyst would be used in prefiling resolution efforts. In that context, the legal counsel may advise the valuation analyst to limit the scope of the valuation.

From a valuation analyst's perspective, it is recommended to prepare the written work product as if the engagement will proceed to trial. In other words, no matter how likely it is that the case will settle, the valuation analyst should employ the same manner of due diligence and care.

Relevant Shareholder Decisions

The following discussion summarizes and reviews significant issues related to recent litigation decisions. This discussion is not intended to:

1. summarize all the main points of contention related to the subject decisions,
2. present all of the significant issues related to the subject decisions, or
3. purport that use of the recommended procedures would have necessarily changed the outcome of the identified significant issues.

Therefore, this discussion summarizes the following judicial decisions for illustrative purposes. We focused on specific aspects of recent decisions involving shareholder dissent matters. In other words, we take a rather myopic view of these recent decisions, by focusing on one or two aspects of each judicial decision.

In general, it is not practical to assume that the application of successful procedures in each case would have completely changed the decision result. However, it may have helped in certain areas, as we discuss below.

Blackburn v TKT and Associates, Inc.

Blackburn. v. TKT and Associates, Inc.[1] was a South Carolina Supreme Court decision involving two minority shareholders (the "Plaintiffs") in Carolina Mobility (the "Company"). The Plaintiffs sued for dissolution and damages. The Plaintiffs alleged that two other shareholders (the "Defendants") were draining the Carolina Mobility profits by taking excessive salaries from the Company.

At the trial court, the Plaintiffs won based on their argument. However, the trial court, instead of allowing for dissolution of the Company, decided to allow for a shareholder buyout of the Plaintiffs' shareholdings.

The trial court found that the Defendants were taking excessive salaries. However, the court-appointed appraiser did not adjust the stock valuation, as relied on by the trial court to set the shareholder buyout price, for the amount of the excessive salaries.

In *Blackburn*, the Plaintiffs sought and won a reversal of the trial court decision to accept the stock value of the Company without adjusting that value for the amount of the excessive compensation.

Significant Issue

The trial court ordered that an appraisal of the company be conducted in 2006. The court-appointed appraiser used an income approach to value the corporation. However, according to the judicial decision as rendered in *Blackburn*, the appointed valuation analyst violated the agreed-upon income approach methodology to determine the fair value of corporation's common stock for purpose of the shareholder buyout.

In *Blackburn*, the Supreme Court found that the stock valuation report did not normalize the Company's earnings by making necessary adjustments for the Defendants' excessive salaries. Therefore, the Supreme Court was "required to vacate the appraisal report."

Furthermore, the appraiser's report did not comply with the relevant valuation standards. The Supreme Court found that the appraiser's report did not comply with the valuation standards of (1) the American Institute of Certified Public Accountants (AICPA), (of note, the Statement on Standards for Valuation Services was not effective in 2006, but the AICPA standards were available in draft form) or (2) the National Association of Certified Valuation Analysts (NACVA).

The appraiser stated in the valuation engagement letter that the valuation report would conform to the professional standards as promulgated in the draft of the AICPA valuation standards. Because the AICPA valuation standards require consideration of "normalization adjustments," the failure to do so meant the appraiser did not "abide by the agreed-upon method in conducting the valuation." Therefore, since the stock valuation report did not comply with the relevant valuation professional standards, the report was rejected by the Supreme Court.

Relevance to Commonly Employed Procedures

In *Blackburn*, it appeared that the valuation analyst either did not effectively communicate or understand the trial court directive. Perhaps if the valuation analyst had employed better follow-up communication procedures, in addition to what was discussed in this matter, the valuation analyst may have avoided his mistake.

As cited in *Blackburn*, the valuation analyst did discuss the relevant compensation issue with both litigant parties. However, the valuation analyst did not make a compensation-related normalization adjustment in the Company valuation analysis.

Albert Trostel & Sons v Edward U. Notz

Albert Trostel & Sons Company v. Edward U. Notz, et al.[2] was a Wisconsin U.S. District Court decision. This decision involved a merger transaction of the Albert Trostel & Sons Company (ATS) which occurred on May 17, 2007. Edward U. Notz, a minority shareholder, dissented to the transaction.

The ATS board of directors employed a valuation analyst who performed his due diligence from February 8, 2007, through April 18, 2007. The valuation analyst estimated a fair value of $11,900 per share for the ATS stock.

In contrast, the valuation analyst employed by Notz performed his due diligence from approximately July 13, 2007, through July 24, 2007. That analyst estimated two scenarios of fair value. Presumably, as part of Notz's legal strategy, Notz relied on the higher scenario value estimate of $21,578 per share for the ATS stock.

At the time that Notz notified the company of his valuation analyst's estimate of fair value, the difference between the two valuation experts was approximately 81 percent.

In August 2007, presumably due to continued disagreement including the value differential, ATS filed for a "special proceeding" for judicial determination regarding the fair value of the ATS stock.

Prior to trial in 2009, Notz's valuation analyst revised his fair value estimate of the ATS stock to $13,733 per share. Therefore, at the time of the trial, the difference between the two valuation analysts was approximately 15 percent.

In *Trostel*, the Court noted that the new fair value estimate provided by Notz was "a substantial departure from the $21,578 per share he required in 2007."

It is noteworthy that on each of the valuation-related issues considered in *Trostel*—that is, four identified areas of disagreement between the valuation analysts regarding the discounted cash flow method and two identified areas of disagreement between the analysts regarding the guideline publicly traded company method—the position of the company's valuation analyst prevailed.

Significant Issue

In *Trostel*, ATS claimed that Notz demonstrated arbitrary and vexatious conduct of bad faith by requiring a price per share of $21,578. ATS claimed the original estimate presented by Notz was:

1. without analytical support and
2. prepared in haste without consideration of the requirements of Wisconsin law for determining fair value.

ATS claimed that the valuation analyst employed by Notz was not hired until 13 days prior to his presentation of the demand notice to the company. Also noteworthy is that Notz did not provide the initial valuation report until the trial.

Notz prevailed with respect to his conduct in providing the original estimate of $21,578 per share. Presumably that was because Notz was able to produce a valuation report dated July 25, 2007, which supported his claim of $21,578 per share.

ATS also alleged that Notz withheld relevant materials from his valuation analyst. To that end, ATS identified documentation that "may or may not" have been provided by Notz to his valuation analyst.

The Court found that, beyond a few indicated documents, ATS was not able to substantiate its claim. Notz did provide his valuation analyst with (1) the ATS valuation report and (2) an "Information Statement" that was prepared by the company for the minority shareholders. Therefore, the Court held that Notz did provide proper documentation.

Relevance to Commonly Employed Procedures

In *Trostel*, although the company did not win in its claims of bad faith against Notz, it does appear that the shareholder's valuation analyst provided a decision in haste—as used by the dissenting shareholder in his initial demand.

An allowance for adequate time appears to have been an issue, as discussed in *Trostel*, in that Notz knew of the merger decision on April 26, 2007. Notz hired an attorney on May 2, 2007, and

> **"The Court ruled that the inclusion of potential synergies did not allow for 'a sound DCF valuation.'"**

perfected his dissenter's rights on the date of the merger, May 17, 2007. However, it was not until July that Notz hired a valuation analyst.

Other issues (although again it appears that they did not work directly against Notz) relate to (1) documentation management and (2) communication of relevant documentation. The Court sided with Notz as to the communication of relevant documents. In *Trostel*, the Court found that the documentation provided by Notz to Notz's analyst did not suggest evidence of bad faith.

An underlying issue in *Trostel*, due to Notz presenting a fair value per share of $21,578 for the ATS stock and then a revised estimate of $13,733 per share, was that Notz's valuation analyst may have lost credibility with the Court.

Regardless of why Notz used the $21,578 per share value, Notz's valuation analyst did significantly change his fair value estimate by the time of the trial. Perhaps if Notz had presented a fair value estimate of around 15 percent greater than the merger price at the time he presented his notice to ATS, the two parties could have reached an agreement.

Dollar Thrifty Shareholder Litigation

The *Dollar Thrifty Shareholder Litigation*,[3] was a Delaware Chancery Court decision. That case involved an April 2010 merger agreement between Hertz Global Holdings, Inc. ("Hertz") and Dollar Thrifty Automotive Group, Inc. ("Dollar Thrifty").

The parties entered into an agreement whereby: (1) Hertz would acquire the Dollar Thrifty stock at a price of $41 per share and (2) a $200 million cash dividend would be paid by Dollar Thrifty to its shareholders.

A group of Dollar Thrifty shareholders ("Plaintiffs") sought an injunction on the proposed merger. The Plaintiffs claimed that the Dollar Thrifty board of directors ("Defendant") did not fulfill its obligatory duties in seeking maximum value for the company shareholders.

The Court denied the Plaintiffs' request for an injunction, ruling that there was sufficient evidence to indicate that the Defendant tried to maximize shareholder value.

Significant Issue

In *Dollar Thrifty*, the Court criticized the Plaintiffs' valuation analyst's discounted cash flow (DCF) valuation analysis. The value concluded from the Plaintiffs' DCF analysis was significantly higher than the value concluded from the Defendant's DCF analysis. The difference was primarily due to the inclusion of potential synergies from the proposed merger.

The Court ruled that the inclusion of potential synergies did not allow for "a sound DCF valuation." When the effect of the post-merger synergies were eliminated from the Plaintiffs' DCF analysis, the Plaintiffs admitted that their analysis was "not fundamentally different" than the Defendant's analysis.

Relevance to Commonly Employed Procedures

In *Dollar Thrifty*, the shareholders' valuation analyst was perhaps provided incorrect advice at the time that the engagement was communicated to him. The Court reasoned that the inclusion of the potential post-merger synergies was not in line with the judicial definition of fair value.

One of the most common definitions of fair value for dissenting shareholder matters is as follows: the value of shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.[4]

It appears that the shareholders' valuation analyst performed a valuation in direct contradiction to this common fair value definition.

Parisi v. Miranda

Parisi v. Miranda[5] was a Florida Appellate Court decision, involving a minority shareholder ("Plaintiff") in Island Shore Homes, Inc. (the "Company"). The Plaintiff filed a lawsuit against other Company shareholders ("Defendants") after the Plaintiff discovered that funds were missing from the Company's financial accounts.

Presumably because the Plaintiff filed the lawsuit—and (coincidently) shortly after he filed the lawsuit—the Plaintiff's employment with the Company was terminated. The date of his employment termination was August 31, 2006.

In the trial court, the Plaintiff prevailed on his legal claims and won a judgment based on his appraiser's estimate. However, in the appellate court, that trial court decision was reversed. This was primarily because the Plaintiff's appraiser used the wrong valuation date.

Significant Issue

According to the Company shareholders' agreement, the value of the Plaintiff's shares were to be estimated using a formulaic value. Also, as described in the shareholders' agreement, the correct valuation date is the date of employment termination. However, in contradiction to the shareholders' agreement, the Plaintiff's valuation expert provided an opinion of value using financial data for the year ended December 31, 2006.

In *Parisi*, the Appeals Court reasoned that the trial court jury did not have appropriate evidence as of the proper valuation date, August 31, 2006. Therefore, the jury's verdict was "contrary to the manifest weight of the evidence since the jury assigned a value to the shares," using evidence provided by the Plaintiff's expert as of December 31, 2006. Therefore, the Appeals Court overturned the trial court's decision.

Relevance to Commonly Employed Procedures

In *Parisi*, it appears that the correct valuation date was not communicated to the Plaintiff's valuation analyst. It was not clear who instructed the valuation analyst or if the analyst interpreted the shareholders' agreement on his own accord.

However, with regard to the communication of the proper valuation date, it's common for the valuation analyst to look to the legal counsel for advice.

Hanover Direct, Inc.

The *Hanover Direct, Inc. Shareholders Litigation*,[6] was a Delaware Chancery Court Decision involving a going-private merger of Hanover Direct, Inc. ("Hanover"). Hanover was a direct marketing company that experienced deteriorating financial performance since the late 1990s.

At the time of the merger proposal, Chelsey Direct LLC ("Chelsey") controlled 77 percent of the company stock and 92 percent of the company voting rights.

Chelsey proposed, and the Hanover board of directors approved, a going-private merger. In that merger, the minority shareholders were to be bought-out at $0.25 per share (collectively, Chelsey and the Hanover board of directors are referred to as the "Defendants").

Following the merger approval, several stockholders ("Plaintiffs") filed a lawsuit, claiming that the $0.25 per share received did not reflect fair value. The Plaintiffs' claimed that the fair value of the company common stock at the time of the merger was $4.75 per share.

Interestingly, the Chancery Court was overwhelmingly supportive of the valuation analyst used by the Defendants. In contrast, the Chancery Court was overwhelmingly dismissive of the Plaintiffs' valuation analyst.

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Significant Issue

The Plaintiffs' valuation analyst offered an opinion that the share price received by the minority shareholders of Hanover was grossly unfair. The valuation analyst opined that, based on the market approach, the fair value of the company common stock was significantly greater than the offer price accepted by the Defendants.

However, the Chancery Court ruled that the Plaintiff's valuation analyst testimony was completely unreliable, primarily due to reliance on only one valuation method—a comparable company valuation analysis. In contrast, the Defendants' valuation analyst presented a more robust analysis by using multiple valuation methods.

The Chancery Court found that, "although there is no single preferred or accepted valuation methodology under Delaware law that establishes beyond question a company's value there are commonly accepted methodologies that a prudent expert should use in coordination with one another to demonstrate the reliability of its valuation."

Furthermore, "If a [DCF] reveals a valuation similar to a comparable companies or comparable transactions analysis, I have more confidence that both analyses are accurately valuing a company."

Relevance to Commonly Employed Procedures

In *Hanover*, it appeared that either (1) there was a lack of communication regarding Delaware case law with respect to the Plaintiff's valuation analyst, or (2) the Plaintiff's valuation analyst operated under some defined expectations that were not supportable. It is unclear how the Plaintiff's valuation analyst could have helped her position—perhaps by the use of a more robust valuation analysis.

Helfman v. Johnson

Helfman v. Johnson,[7] was a Minnesota Appellate Court opinion, involving a minority shareholder action for a buyout based on alleged shareholder oppression. The business at issue was formed by

the combination of a title examination company and a closing company in 1998.

The subject corporation was successful at first. But, as the real estate market declined in 2002 and into 2003, the relationship of the business shareholders deteriorated. Eventually, the majority shareholders ("Defendant") attempted to force out the minority shareholder ("Plaintiff") by diluting the minority shareholder's interest from 24 percent to 5 percent.

Significant Issue

In the ensuing litigation, both sides presented valuation reports and expert testimony that the trial court found troubling. Plaintiff's valuation expert testified to a value of the proportionate fair value of the going concern business operations of $1.85 million. That value conclusion was based on an income approach, DCF method, using the historical financial statements of the business.

In contrast, the Defendant's valuation expert testified that the business should be valued using an asset approach, using a net asset value method, to conclude a fair value of $11,000 for the business operations. In support of the net asset value method, the Defendant argued that (1) there was an ease of entry into the company's line of business and (2) the business was highly dependent on its key personnel.

The business did not have employment agreements or non-competition agreements with the key employees. In addition, the real estate market was in a serious decline at the time.

The trial court was troubled by the failure of Plaintiff's expert to take into account the industry decline, as evidenced by the use of prior income results without adjustment for the adverse industry conditions. The trial court found that projecting future income on the basis of the business operating history—without regard to the current economic trends—was overly optimistic.

The trial court was also troubled by the Defendant expert's view of the business. The trial court found that the Defendant expert's opinion was unrealistic. That opinion ignored goodwill, and it did not value the business operations on a going concern premise of value.

Of note, the Defendant's expert suggested that if he had used the income approach, the fair value of business operations might have been in the range of $1 million.

The trial court went on to use the income approach, DCF method, to value the business. The trial court relied on Plaintiff's DCF valuation analysis, but it discounted the resulting fair value.

In effect, the trial court applied a discount to produce a result that it considered fair and equitable to all, under the circumstances. However, that "fair and equitable discount" (FED) was not considered a discount for lack of control. In addition, the trial court specifically said it was not a discount for lack of marketability.

On appeal, the trial court decision was affirmed. The appellate court specifically acknowledged (1) that the standard of value was fair value and (2) that the trial court expressly stated that the discount was not for a lack of control or lack of marketability, but a discount to achieve fairness.

Relevance to Commonly Employed Procedures

The *Helfman* decision is a reminder that fair value is not fair market value, and "fairness" is sometimes not necessarily a financial concept. As a result, the legal counsel and the valuation analyst should carefully consider the value indications.

More specifically, the legal counsel and the valuation analyst should consider how the estimated value indication may appear. Is the value indication optimistic? Or, is the indication pessimistic?

Aside from valuation methods used in the application of the fair value standard, a shareholder dispute matter can present unusual issues. The legal counsel and the valuation analyst should collaborate on these issues. The fair value standard suggests an element of "fairness" that may not translate well (or at all) into the generally accepted valuation methods.

Nevertheless, during the engagement, legal counsel and the valuation analyst may find it helpful to discuss the circumstances of the subject matter and of the subject parties in order to circumvent potential adverse implications.

While the prospect that the court finds what is referred to above as the FED may not be apparent at the beginning of an engagement, or in the application of generally accepted valuation methods, frequent communication and collaboration by the legal counsel and the valuation analyst may bring such a potential value adjustment to light so that it may be appropriately considered.

Summary

This discussion recommends successful practices that should help both the attorney and the valuation analyst work together in the context of a shareholder litigation. These practices include the following:

1. Effective early communication
2. Allowance for adequate time
3. Efficient document management
4. Open lines of communication including follow-up
5. Defining relevant expectations

We developed these recommended practice ideas through personal experiences and observation. In a typical engagement, we follow these procedures where practically possible.

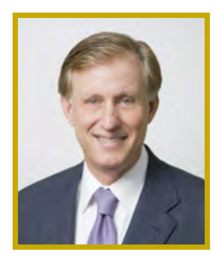
We used illustrative case examples to highlight how, in the most general context, these procedures were not followed. In each example, with the exception of a few instances in *Trostel*, the application of these commonly used procedures may have made a difference.

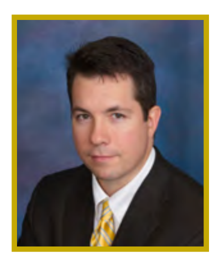
That is not to say it would have definitively made a difference. This is because, for the most part, judicial decisions can be unpredictable and general notions of "fairness" can pervade a court's decision.

In general, while there may be similarities between nonrelated shareholder dispute matters, there are normally specific nuances that make each dispute unique. In each matter, the attorney and valuation analyst should work together and decide which practices to employ.

<u>Notes:</u>

1. Blackburn v. TKT and Associates, Inc., 387 S.C. 589, 693 S.E.2d 919 (S.C. 2010).
2. Albert Trostel & Sons Company v. Edward U. Notz, et al., No. 07-C-0763, 2010 WL 3835117 (E.D.Wis Sept. 28, 2010).
3. Dollar Thrifty Shareholder Litigation, 14 A.3d 573 (Del. Ch., 2010).
4. Revised Model Business Corporation Act (Section 13.01(3)(1998).
5. Parisi v. Miranda, 15 So.3d 816 (Fla. App. 2009).
6. Hanover Direct, Inc., Shareholders Litigation, Consol. C.A. No. 1969-CC, 2010 WL3959399 (Del. Ch. Sept. 24, 2010).
7. Helfman v. Johnson, No. 5458-VCS, 2010 WL 3503471 (Del. Ch. Sept. 8, 2010).





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